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Decision

Matter of: Intercon Associates, Inc.

File: B-298282; B-298282.2

Date: August 10, 2006

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DIGEST

Protest of agency's evaluation of proposals is sustained where record shows that agency, in evaluating protester's proposal and making its source selection decision, relied upon numerous unreasonable or unsupported evaluated weaknesses regarding the protester's proposal.

DECISION

Intercon Associates, Inc. protests the General Services Administration's (GSA) award of a contract to Information Analysis, Inc. (IAI), under request for proposals (RFP) No. GS-00V-06PDC0001, for an automated electronic forms system software package, along with software maintenance and support services. Intercon asserts that the agency misevaluated proposals and made an unreasonable source selection decision.

We sustain the protest.

BACKGROUND

The RFP contemplated the award of a fixed-price, indefinite-delivery/indefinite-quantity contract for a base year with four 1-year options, to provide the agency with a comprehensive electronic forms system to replace and upgrade its existing electronic forms capability. The contemplated system is required to provide full life-cycle services, from the creation of an electronic form to its entry into GSA's forms system; include all associated software necessary to allow forms users to fill out the

forms, electronically “sign” the forms, and transmit them back to the government; and allow the government to process the information entered in completed forms. Statement of Work (SOW) at 2. For other than the incumbent contractor (Intercon), the proposed system also is required to convert GSA’s existing electronic forms data base from its current format to the offeror’s proposed format.

Award was to be made on a “best value” basis considering price and the following non-price factors: technical approach, organizational experience and past performance, and key personnel. Technical approach was more important than the other two technical factors, which were equal in importance. RFP at 11-13. The technical factors were more important than price. RFP at 14.

The agency received 11 proposals in response to the solicitation and, after conducting an initial evaluation, established a competitive range that included 8 of the proposals. The eight offerors in the competitive range were asked to conduct an operational demonstration of their respective products. After the operational demonstrations were conducted, the agency evaluated the proposals as follows:

Offeror	IAI	Intercon	Offeror A	Offeror B	Offeror C	Offeror D	Offeror E	Offeror F
Combined Technical Score ¹	91.27	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]	[deleted]
Total Price	\$2,380,416	[\$deleted]	[\$deleted]	[\$deleted]	[\$deleted]	[\$deleted]	[\$deleted]	[\$deleted]

Agency Report, exh. 112, at 2. On the basis of these evaluation results, the agency made award to IAI, finding that its proposal represented the best value to the government, considering price and the non-price factors.

OVERVIEW

Intercon protests virtually every evaluated disadvantage relating to its proposal, maintaining that the agency’s findings are either unsupported, otherwise erroneous, or inconsistent with the terms of the solicitation.

¹ The record shows that in arriving at these combined final evaluation scores, the agency improperly assigned a weight of 10 percent to the key personnel factor and 30 percent to the organizational experience and past performance factor, rather than weighting them equally as specified in the RFP. During the course of the protest, the agency recalculated the scores using an equal weight for the two factors; the recalculation resulted in only a minimal change to the offerors’ combined scores and did not affect the ranking of the proposals.

Our Office does not reevaluate proposals; rather, we examine the record to determine whether the agency's evaluation judgments and conclusions were reasonable and consistent with the terms of the RFP and applicable procurement statutes and regulations. Century Env'tl. Hygiene, Inc., B-279378, June 5, 1998, 98-1 CPD ¶ 164 at 4. In order for us to review the agency's evaluation and source selection, the agency must have adequate documentation to support its decision. Id.

We have reviewed the record here and conclude that the evaluation is not adequately supported. We note at the outset that the evaluation record here is brief, comprised only of the initial evaluation scoring sheets prepared by the individual evaluators (for example, the record does not include the consensus source selection evaluation report contemplated by the source selection plan, AR, exh. 103, at 8); a brief summary of advantages and disadvantages observed during the operational demonstrations; and a brief source selection document. (In this regard, the advantages and disadvantages observed during the operational demonstration are identical to the advantages and disadvantages included in the source selection document.) We find that the evaluation judgments are, in many instances, either factually incorrect, internally contradictory, or so cryptic that we are unable to discern either the basis for the evaluators' concerns or how their concerns related to the solicitation's evaluation criteria. We discuss our principal findings below.

TECHNICAL APPROACH

Intercon challenges all six of the evaluated disadvantages noted in the source selection decision regarding its proposal. Our review confirms that five of the six evaluated disadvantages are unreasonable or otherwise unsupported.

Forms Creation Tool

In its source selection decision, GSA criticized Intercon's proposal for not offering a "true" forms creation tool. AR, exh. 112, at 4. In its agency report, GSA elaborates on this observation, explaining that Intercon's technical approach requires the production of a paper form that is scanned to create an electronic image of the form, which is then overlaid with fields into which data may be entered. AR at 6-9. The agency maintains that Intercon's proposed forms creation tool, [deleted], while suitable for creating a paper form that is then scanned to create the electronic form, is not the "tool of choice" for creating electronic forms. Id.

Intercon challenges the agency's conclusion, asserting that its technical approach in fact does not require the creation of a paper form that is then scanned. The protester asserts, with references to its proposal, that [deleted], in conjunction with [deleted] other modules of the proposed Intercon solution [deleted], function together to create true electronic forms. Initial Protest at 13-14; Supp. Protest at 15-17; Comments, June 19, 2006, at 4; Supp. Comments, July 11, 2006, at 13; Intercon Technical Proposal at 1, 10-11. Intercon also asserts that, in any case, its proposed

technical solution does not require use of [deleted], but instead can use any file type created by any Windows-based software to create an electronic form. Id.

We find GSA's determination that Intercon's technical approach requires the creation of paper forms, and that Intercon's forms creation tool thus does not create a true electronic form, is not supported by the record. Intercon's technical proposal specifically described a forms creation process which involves the creation of a new electronic form image using [deleted]. Intercon Proposal at 10-11. Moreover, Intercon's proposal specifically distinguished this process from another, alternative, process that does involve the use of a paper form. Id. Thus, our review of the Intercon proposal confirms the protester's assertion that its proposed forms creation approach does not require the use of a paper form as a starting point for the forms creation process. Under these circumstances, it is not apparent on what basis the agency concluded that the forms creation tool proposed by Intercon was not a "true" forms creation tool, or that Intercon's proposed forms creation tool is not the "tool of choice" for creating electronic forms. (For that matter, the record is devoid of any explanation regarding why the forms creation tool offered by the protester is less advantageous than the forms creation tool offered by the awardee.) We therefore find this aspect of the agency's evaluation to be unreasonable.²

File Size

The source selection decision identified as a further disadvantage of Intercon's proposed technical approach that the file size of its electronic forms is larger than the file size of the electronic forms created using other formats. The protester maintains that the agency is factually incorrect, and that in fact, the file size of Intercon's electronic forms is actually smaller than the file size of the forms offered by IAI. (IAI offered a product developed by Adobe Systems, Inc., using portable document format (PDF) files.) In support of its position, the protester points to the agency's current forms library, which in some cases includes both the protester's format of a given form (known as the Accessible FormNet format) and a PDF version of the same form; the protester asserts that a comparison of the two formats shows that files in its proposed file format are smaller than the corresponding PDF files. (For illustrative purposes, the protester references, Standard Form (SF) 278 and Office of Personnel Management (OPM) Form 71, the two forms used by

² One of the technical evaluators also criticized Intercon's use of [deleted] as its forms creation tool because, according to the evaluator, use of the product can be difficult when application updates occur, and because the tool was not readily available to users because it would be provided to the agency on compact disc. AR, exh. 104, at 5. GSA, however, has not explained how Intercon's proposed forms creation tool is less advantageous in this regard than the other offerors' tools, which presumably also require periodic updates, or how the medium of distribution (compact disc) used by Intercon would limit its availability to the user community.

Intercon in its operational demonstration. Supp. Protest, exh. C.) The protester maintains that file size thus cannot serve as a reasonable basis to downgrade its proposal.

The record supports Intercon's position. The Accessible FormNet version of SF 278 is 407.6 kilobytes (kb), while the PDF version of the form is 1799.3 kb. Similarly, the Accessible FormNet version of OPM 71 is 75.8 kb, while the PDF version of the form is 186.2 kb. Supp. Protest, exh. C. (We note as well that, notwithstanding the above file size criticism in the source selection decision, two of the three technical evaluators noted as an advantage of the Intercon proposal that it offered a "small file footprint." AR, exhs. 105, at 5, 106, at 5.) The agency does not rebut this aspect of the protest. We conclude that this criticism of the protester's proposal was unreasonable.

Wizard Function

The protester's product offered three possible methods for end users to enter data into an electronic form. First, the user can type information directly into the fields of the form as it appears on the screen. Second, the user can use what the protester refers to as its [deleted] function, which is designed to enable visually impaired users to fill out forms through the use of verbal prompts and responses; the protester's software works in conjunction with verbal prompt/response software that is employed by visually impaired users. Finally, using the "wizard function," the user sees a split screen, a portion of which displays the form being filled out and a portion of which displays a written prompt/response text window; the user types responses to questions and the data automatically appears in the appropriate field of the form. Intercon Proposal at 1-2, 12, 19-20.

The agency's source selection decision criticized Intercon's proposed wizard function on the basis that "[t]he wizard looks weird when the form is above it." AR, exh. 112, at 4. Intercon asserts that this negative observation is unexplained in the record and bears no relationship to the requirements of the RFP and the evaluation criteria.

We agree with the protester. Agencies are required to evaluate proposals based solely on the factors identified in the solicitation, and must adequately document the reasons for their evaluation conclusions. Computer Info. Specialist, B-293049, B-293049.2, Jan. 23, 2004, 2004 CPD ¶ 1 at 3-4. There is nothing in the RFP's evaluation scheme that calls for an evaluation of, or relates to, the on-screen appearance of an offeror's product. Moreover, it is not clear what the evaluators meant in commenting that the protester's wizard function looked "weird." There is nothing in the evaluation or protest record that even attempts to define this term. Furthermore, we note that the evaluators made favorable observations about Intercon's wizard function elsewhere in the evaluation materials. Indeed, immediately above the criticism noted above, the source selection decision itself

notes that Intercon's product offered a "nice wizard function." AR, exh. 112, at 4; see also AR, exhs. 104, at 5, 105, at 5, 106, at 5. We therefore conclude that this criticism of Intercon's proposed wizard function as looking "weird" did not serve as a reasonable basis for downgrading the protester's proposal.

Filler Application

The source selection decision criticized Intercon's proposed system on the basis that Intercon's separate form filler application is required in order for an end user to use Intercon's proposed electronic forms product. Elsewhere, the evaluators criticized Intercon's product because its form filler application must be downloaded to a user's computer, AR, exh. 104, at 5, and is not available to most government agencies. AR, exhs. 105, at 5, 106, at 5. We find the evaluation in this regard to be unreasonable. The protester notes, and the agency does not dispute, that all of the offered electronic forms products require some type of form filling application to be downloaded in order to use the product; for example, an Adobe Reader and various reader extensions must be downloaded in order to use the awardee's product. AR, exh. 102, at 20. Indeed, the RFP specifically contemplated that end users using a form filler tool might be required to download a software product. SOW at 5. Further, as noted by the protester, contrary to the agency's criticism that its form filler tool is not widely available to most government agencies, it appears that Intercon's form filler tool in fact is widely distributed, as demonstrated by a list (furnished by the protester) showing that some 37 different federal agencies or entities have installed in excess of 77,000 copies of its form filler tool. Supp. Protest, exh. B. We therefore conclude that this aspect of the agency evaluation was unreasonable.

External Digital Certificates

The source selection decision further criticized Intercon's product because it requires the use of external digital certificates.³ Intercon maintains that this is not a legitimate basis of criticism for two reasons. First, according to the protester, its product allows for identification of the user [deleted] to an e-form, or through the use of an external digital certificate; thus, external digital certificates are not, in fact, required in all cases. Second, according to the protester, all electronic forms products must use digital certificates at certain security levels, but the solicitation did not specify a preference for digital certificates that are issued and managed

³ A digital certificate is part of the infrastructure needed to verify electronically the identity of an individual submitting information. Digital certificates are issued and managed either by the organization providing the service (for example, by an offeror such as the protester or the awardee), or by a third party such as the government (as in the case of GSA's access certificate for e-services (ACES) program) or some commercial concerns (several of which are mentioned in the protester's proposal).

internally versus those that are issued and managed externally, as offered by the protester.⁴

As an initial matter, we note that the agency has not responded substantively to the protester's detailed challenge to this criticism of its proposal as requiring the use of external digital certificates. In any case, it appears from the record, as well as from publicly available materials (such as OMB Letter M04-04 and NIST Special Publication 800-63) that the protester is correct in both of its assertions. Its proposal clearly indicated that its product provides for use of either [deleted] or digital certificates, depending upon the level of authentication required. Intercon Proposal at 8-10. Moreover, neither the specifications, nor the stated evaluation criteria, indicate a preference for internally issued and managed digital certificates as opposed to externally issued and managed digital certificates. Additionally, we note that the awardee's proposal stated, without elaboration, that its approach meets the e-authentication requirements [deleted]. AR, exh. 102, at 20. As indicated above, at certain security levels digital certificates are required; there is no way to determine from the record what type of digital certificates ([deleted]) IAI will use, or whether its proposal differs from the protester's in this regard. We conclude that this criticism did not provide a reasonable basis for downgrading Intercon's proposal.

In sum, we find that the agency relied on unreasonable and otherwise unsupported criticisms of Intercon's proposed technical approach in reaching its source selection decision.

KEY PERSONNEL

Although not expressly identified as a discriminator in the agency's source selection decision, the record shows that the evaluators assigned [deleted] numeric scores⁵ to Intercon's proposal under the key personnel evaluation criterion; this, in turn, contributed to the firm's [deleted] overall numeric score. Intercon challenges these scores, maintaining that the narrative materials in the evaluation record for key personnel indicate that the agency's concerns in this area were unrelated to the

⁴ For a detailed discussion of the various security levels and the requirements relating to each level, see Office of Management and Budget (OMB) Letter M04-04 and National Institute of Standards and Technology (NIST) Special Publication 800-63. Briefly, there are four levels of authentication and, at a minimum, digital certificates are required at levels 3 and 4.

⁵ The evaluators assigned scores of [deleted] and [deleted] respectively to the Intercon proposal for key personnel. AR exh. 108. The source selection plan defined a [deleted] score as any score between [deleted] and [deleted] points. AR, exh. 103, attach. 5.

evaluation criterion specified in the RFP, and therefore cannot support the low scores.

For purposes of evaluating the offerors' key personnel, the RFP provided as follows:

The offeror's responses contained in this factor shall reflect an in-depth and mature understanding of the requirement scope. This will be evidenced in the offeror's ability to demonstrate an awareness of the managerial challenges, risks, and responsibilities involved in performing a contract of this type and scope. Offerors should also note that the Government is interested in the stability of the employment of key personnel as well as their quality. This factor shall be evaluated on the following elements which are of equal importance:

Recruitment, retention and workforce

Organizational structure and lines of authority

Availability and qualifications of the proposed staff, their experience in similar projects and their capability to fully and professionally accomplish the objectives stated herein

Ability of proposed staff to develop proposals and plans, including goals, justifications, objectives, milestones, and progress charts; develop time frame projections and resource requirements; establish budgets and coordinate projects to ensure their timely completion

Ability to communicate both orally and in writing with both technical staff and project managers; and

Consideration of the required knowledge, skills and abilities as specified in the RFP.

RFP at 13-14.

Based upon our review of the evaluation record in this area (a record that, as with other aspects of the evaluation, includes only a minimal narrative documenting the evaluation), we find the overall evaluation of Intercon's key personnel to be unsupported and to bear little relationship to the basis for evaluation set forth in the solicitation.

One of the evaluators criticized Intercon's proposal on the basis that Intercon's key personnel had "[deleted]." AR, exh. 104, at 6. The stated evaluation criterion, however, did not expressly provide for consideration of [deleted] or [deleted], nor has GSA explained how these considerations are reasonably related to the stated evaluation criterion. Indeed, the only specific RFP reference to key employee

experience indicates that the agency is interested in obtaining key personnel who have experience in using the offeror's proposed methodologies and tools. RFP at 3. Since all of Intercon's proposed key personnel have experience in using the firm's proposed methodologies and tools (as noted, Intercon is the incumbent), the evaluator's criticism does not appear to be consistent with the solicitation.

The remaining two evaluators observed that Intercon's key personnel have "[deleted]." AR, exhs. 105, at 6, and 106, at 6. Again, these observations appear to be unrelated either to the stated evaluation criterion, or to the indication in the RFP that the agency was interested in key personnel that had experience with the methodologies and tools proposed. Indeed, these observations arguably could be viewed as advantages to the extent that they recognize that Intercon's key personnel are intimately familiar with their proposed product and are "[deleted]." (One of these evaluators also noted that Intercon's key personnel had "[deleted]." AR, exh. 105, at 6. While a [deleted] could legitimately be a basis under the stated criterion for downgrading Intercon's proposal in this area, there is no basis to conclude on this record that this criticism, standing alone, would serve as a justification for rating the firm's key personnel [deleted] overall.)

We conclude that the agency's assignment of [deleted] scores to Intercon's proposal for key personnel was unreasonable.

BIAS

Intercon asserts that at least one, and possibly two, of the three technical evaluators were biased against it. In support of its assertion, the protester directs our attention to the results of the evaluation, maintaining that the striking similarity of the narrative materials in the evaluation worksheets for two of the evaluators show that they were biased against Intercon. In addition, Intercon directs our attention to several e-mails prepared by one of the evaluators that it maintains show that he was biased against the firm. (Intercon also references comments allegedly made at various times by this individual that it maintains show that he is biased against Intercon.)

We have no basis to make a finding of bias on the record before us. Government officials are presumed to act in good faith and, where a protester contends that contracting officials are motivated by bias or bad faith, it must provide convincing proof, since our Office will not attribute unfair or prejudicial motives to procurement officials on the basis of inference or supposition. WorldWide Language Res., Inc., B-297210, et al., Nov. 28, 2005, 2005 CPD ¶ 211 at 4.

Regarding the identity of findings in the narrative materials of the two evaluators, there simply is nothing inherently improper in there being similarity among the findings of two or more evaluators; this shows little more than that these evaluators may have discussed--and agreed upon--their evaluation findings. In fact, had the

agency prepared the consensus evaluation report contemplated by the source selection plan, the findings of all three evaluators would effectively have been identical.

As for the referenced e-mails, there is nothing included in them that reflects bias; at most, they suggest that the evaluator's in-house information technology personnel (the evaluator is from an agency other than GSA) might have concerns over the installation of Intercon's form filler application in the agency's computing environment. This does not rise to the level of convincing proof that this evaluator was biased against Intercon. Accordingly, we deny this aspect of Intercon's protest.⁶

CONCLUSION

As noted, the record shows that the agency's source selection decision was based upon numerous criticisms of the protester's proposal which were unreasonable or unsupported, and that Intercon's numeric score was lower because of these findings. Given these evaluation errors, as well as Intercon's significant [deleted], we conclude that the protester was prejudiced by the agency's miscalculation of its proposal; that is, in the absence of the agency's errors, it appears that Intercon would have had a substantial chance of receiving award. McDonald-Bradley, B-270126, Feb. 8, 1996, 96-1 CPD ¶ 54 at 3; see Statistica, Inc. v. Christopher, 102 F.3d 1577, 1581 (Fed. Cir. 1996). We therefore sustain Intercon's protest.

RECOMMENDATION

We recommend that the agency reevaluate the proposals and make a new source selection decision. In its reevaluation, the agency should thoroughly document its evaluation findings and source selection decision, consistent with the requirements of Federal Acquisition Regulation §15.305. If, at the conclusion of the reevaluation, the agency determines that a firm other than IAI is in line for award, we further recommend that the agency terminate IAI's contract for the convenience of the government, and make award to the other offeror, if otherwise proper. Finally, we recommend that GSA reimburse Intercon the costs associated with filing and

⁶ Intercon challenges other aspects of the evaluation of both its proposal and the awardee's. We need not consider these arguments because we find that the evaluation errors discussed above are sufficient to call into question the reasonableness of the source selection, and because we recommend below that the agency thoroughly reevaluate the proposals.

pursuing its bid protest, including reasonable attorneys' fees. 4 C.F.R. § 21.8 (d)(1) (2006). Intercon's certified claim for costs, detailing the time spent and the costs incurred, must be submitted to the agency within 60 days of receiving our decision. 4 C.F.R. § 21.8 (f)(1).

The protest is sustained.

Gary L. Kepplinger
General Counsel